IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9969 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JASHIBEN D PATEL

Versus

SHREE SARVODHYA KELVANI MANDAL

Appearance:

1. Special Civil Application No. 9969 of 2003

MR CHETAN K PANDYA for Petitioner No. 1-2

MR AJ SHASTRI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2,4

MS ARCHANA RAVAL, AGP for Respondent No. 3,5-6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 29/09/2004

ORAL JUDGEMENT

#. Rule. Mr.A.J.Shastri, learned advocate, waives service of rule on behalf of respondent Nos.1 and 2 and Ms.Archana Raval, learned AGP, waives service of rule on behalf of respondent nos.3 to 6.

#. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226 / 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the revisional authority, i.e. State Government dated 3.5.2003 granting permission to respondent nos.1 and 2 to reduce one class of Standard 5-B in the primary school run by them.

#. It is the contention on behalf of the petitioners that earlier the Director of Primary Education vide order dated 17.2.2003 had rejected the application of respondent nos.1 and 2 for reduction of one class of Standard 5-B, and, at that time, the petitioners were heard. However, when the said order was challenged before the State Government by way of revision application, the petitioners were not heard and in their absence and without giving an opportunity of hearing to them, who are directly affected, the order has been passed granting the permission to reduce one class of Standard 5-B.

#. Mr.Shastri, learned advocate appearing on behalf of respondent nos.1 and 2, has submitted that in view of the fact that there are no students for which one additional class of Standard 5-B can run, and, therefore, even if the opportunity of hearing is given to the petitioners, it would not make any difference. Ms.Archana Raval, learned AGP has tried to support the order passed by the State Government in revision application.

#. Heard the learned advocates for the respective parties.

#. In view of the fact that while refusing to grant permission to reduce one class of Standard 5-B, the petitioners were heard and it is also an admitted position that if the permission is granted to reduce one class of Standard 5-B, the petitioners are likely to be affected, and, therefore, they are required to be heard. Without going into the legality and validity of the order on merits only on the ground that before passing the impugned order, the petitioners are not heard, the impugned order dated 3.5.2003 is required to be quashed and set aside. Accordingly, the impugned order dated 3.5.2003 passed by the Secretary, Education Department is hereby quashed and set aside. The matter is remanded to the State Government for deciding the same afresh on its own merits and in accordance with law after giving opportunity to the petitioners as well as to the school management. However, it is made clear that during the pendency of the proceedings before the revisional

authority, i.e. State Government, there shall be order of status quo as on today with regard to class of Standard 5-B till appropriate decision is taken by the revisional authority. Such exercise is required to be done by the revisional authority within a period of one month from the date of receipt of the writ of this order. Direct service today is permitted.

(M.R.Shah,J)

(pathan)